United States Courts
Southern District of Texas
FILED

APR 13 2017

David J. Bradley, Clerk of Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

KELLY ANN ARISMENDY,

Petitioner,

v.

THE UNITED STATES,
INTERNAL REVENUE COMMISSIONER,
MIGUEL A. PINEDA - REVENUE OFFICER,
JOHN DOE – REVENUE OFFICER,
JPMORGAN CHASE – CUSTODIAN OF RECORDS
Camilla Heruzy

Respondents,

#__________ ______________

PETITION TO QUASH SUMMONS

1. This is an action under the Special Procedures for Third Party Summons(s) Act, U.S.C. Title 26 §7609, to halt the above-names third-party record-keepers from revealing Petitioner's private records to the United States Internal Revenue Service (hereinafter "IRS"), and to quash the current Summons (Exhibit A) to JPMORGAN CHASE, the previous Summons was disavowed by JPMorgan Chase. The "new" summons, having [Chase] file number SB828520-F1 even though signed remains as invalid as the first.

2. Pursuant to U.S.C. Title 26 §7609(h) (1), U.S.C. Title 28§ 1331, 1340 and 1346, and the First, Fourth, Fifth, Ninth, and Tenth Amendments to the U.S. Constitution, this Court has jurisdiction over this action. U.S.C Title 26 §7609(h)(1) clearly states, "*The United States District Court for the district within which the person to be summoned resides or is found shall have jurisdiction to hear and determine any proceeding...*" the third-party record-keeper who received the Summons, who are JPMORGAN CHASE, are found doing business in the State of Texas.

3. Petitioner is a citizen of the United States of America and the state in which she resides and entitles to the protection of its laws. Respondent third-party record-keepers are not found in this district.

4. According to laws, Petitioner, a person entitled to Notice of the Summons under U.S.C. Title 26 § 7609, has the right to begin these proceedings to quash such Summons(s) no later than the 20th day after the day such notice is given, and should mail within 20 days from the date of Notice at the address shown on the Summons by Registered or Certified Mail a copy of this petition to:

A. The third-party record-keeper who received the Summons, who are JPMORGAN CHASE, and

B. The Petitioner before whom the third-party record-keeper is summoned to appear, at the address shown on the Summons which was redacted, and

C. Petitioner was never given notice of her right to file this motion to quash, and

D. Petitioner has no idea under what IRC section this "summons" was issued.

The records sought by the Summons(s) relate to the Petitioner and are her personal records.

5. This Court should squash said Summons, for the following reasons:

A. The IRS may have classified Petitioner as a "Tax Protester" and has abandoned in an institutional sense the pursuit of a civil tax determination or collections purpose and has made an institutional commitment to make a referral to the Department of Justice for prosecution as it would merely like to gather evidence to aid a prosecution. *US v. LaSalle National Bank*, 437 US 248, 98 S Ct 2357 (1978); or

B. The IRS, having abandoned the pursuit of Petitioner's civil tax liability, of which there is none, is attempting to use this Summons for the impermissible purpose of gathering evidence solely for a Criminal Investigation, and is attempting to circumvent the traditional role of the grand jury as the principal tool of Criminal Investigation in our society. *US v. LaSalle National Bank, supra*; or

C. The IRS has made a formal recommendation to the Department of Justice for prosecution of Petitioner or has made an informal determination and withheld the formal recommendation in order to use this civil process to circumvent the decision of the Federal Courts. The IRS has made a preliminary investigation into Petitioner's financial condition, since it has access to a tremendous amount of financial data on Petitioner and has abandoned any hope of making civil assessment or collections in this case, but is delaying in submitting a formal recommendation to the Department of Justice in order to gather additional evidence, to expand its criminal discovery rights, and to serve as an information gathering agency for the prosecuting attorney; or

D. The Summons does not indicate that this is a Criminal Investigation; however, in that much of the information sought has no bearing on a Civil Investigation but generally is used only for criminal prosecution, the court should examine each type of document requested, to test each for a civil purpose. The Court, in examining the Summons(s) and all parts thereof, will discover that not all of the information sought contributes in some way to a civil inquiry. Even if the Court could discover a general civil purpose for the tax investigation, this would not terminate judicial inquiry into whether the Summons(s) (or parts thereof) issued during investigation exceeded the authority of the IRS. The Court must focus on the purpose of the Summons (or parts thereof) and not on the purpose of the investigation as a whole. If either Summons or parts thereof was issued solely for a Criminal Investigation, that particular Summons should be suppressed, even in the face of an overwhelmingly civil purpose for the investigation as a whole. The IRS simply would lack statutory authority to issue that particular Summons. *US v Genser*, 595 F2d 146 (Third Circuit, 1979). The IRS has only that authority granted to it by Congress. Congress has given the IRS administrative Summons powers in IRC §7603 and 7604 to be used only in civil cases and has not yet given this administrative agency mandatory criminal investigatory powers. Therefore, the IRS simply does not have the authority to Summons those particular third-party records which would be used only in criminal prosecutions; or

E. The information in the possession of the Respondent third-party record-keepers is of a private nature and was not intended to be given to parties not authorized by Petitioner. Furnishing such personal and private information about Petitioner to the IRS or any other Governmental body without Petitioner's consent is a violation of Petitioner's person, privacy, Constitutional Rights, and her Natural Rights, which should and ought to be protected by the Government; or

F. The IRS Summons was not issued in good faith, or correctly, as the information sought by each individual Summons is too broad and too sweeping in detail to be used by the IRS only to provide the actual existence of a valid civil tax determination or for a collection purposes. Most of the items sought by the Summons are needed only by the Department of Justice to aid in a criminal prosecution; or

G. The IRS has failed to meet the procedural requirement of the Summons authority, including the required provisions of U.S.C. Title 26 §7602, 7603, 7609, etc. This Summons is patently defective on its face, filled out incorrectly by an unauthorized person, and served incorrectly for an improper purpose. In addition, the IRS' Summons violate the notice and hearing requirements. The agent failed to comply with the mandatory procedures in U.S.C. Title 26 §7605 et al, and has not secured the proper authorization, nor given the proper notice; or

H. The Summons was not issued in good faith, nor conducted pursuant to a legitimate purpose. It is not relevant to any lawful purpose. The information they seek is already within the possession of the Internal Revenue Commissioner. The required administrative steps have not been followed. The Summons is an abuse of the administrative process. It was issued for the improper purpose of harassing and pressuring the Petitioner. *US v Powell, 379 US 78, 85 S Ct 248* (1964).

6. The Government alleges that one opposing this Summons bears the burden of disproving the actual existence of a valid civil tax determination or collection purpose. To meet said burden, Petitioner needs adequate pre-hearing discovery. Given sufficient discovery, Petitioner can prove:

a. No existence of a continuing civil purpose.
b. A pre-existing institutional commitment to prosecute.
c. The failure of the Summons to advance a civil purpose.
d. Improper purpose, personal harassment, etc.

7. In her affidavit to be filled henceforth, Petitioner will enumerate the government's actions, which speak louder than words and show that the true nature of this investigation and the purpose of the government is to circumvent the traditional role of the grand jury and the other Constitutional protections of the Petitioner as guaranteed in the Bill of Rights. IRC §7609 provided Petitioner, as "a person who is entitled to notice of a Summons", the right to petition to quash a Summons. Obviously, the Congress meant for the suit to be meaningful, with adequate pre-hearing discovery, plus a real evidentiary hearing with Government witnesses testifying under oath.

8. IRC §7603 provides that Summons be "attested," and this is mandatory. The IRS Summons in this case is not attested or not attested properly, because *inter alia* they are neither notarized nor properly worded.

9. The Court should quash the administrative Summons issued with respect to the Petitioner on the alternate ground that the IRS failed to satisfy all statutory prerequisites thereto; namely, that the IRS did not notice Petitioner that it was looking into any of Petitioner's tax filings for any years. The IRS neglected to give reasonable advance notice to the Petitioner that it intended to seek information from third-parties.

a. When the IRS issued its administrative Summons to the Respondent recordkeepers, it was required to give the Petitioner a "third-party contact notice" before it made contact with any party, other than the Petitioner, to determine her liability for any tax. 26 USC §7602(c); 26 CFR §301.7602.2(a) ("[Subject to restriction not involved in this case], no officer or employee of the IRS may contact any person other than the taxpayer with respect to the determination or collection of such taxpayer's tax liability without giving taxpayer reasonable notice in advance that such contacts may be made.")

b. In this case, however, not only did the Petitioner not receive from the IRS the third-party contact notice mandated by 26 USC §7602(c), but the IRS' own records will reveal a complete absence that the IRS ever sent the Petitioner such a notice. Thus, the IRS did not send the Petitioner [a third-party contact notice I third-party contact notices] as required by 26 USC §7602(c) before the IRS mailed the administrative Summons(s) to the Respondent recordkeepers. As such, the IRS has failed to satisfy the "all administrative steps required by the Internal Revenue Code for issuance of a summons" competent of the test laid down for the IRS by the Supreme Court of the United States in *US v. Powell, supra*.

c. Given that the IRS must satisfy every element of the Powell test before its Summons may be given legal force and effect, the IRS' failure to do so in the instant case requires the Court to quash the subject Summons.

10. The IRS CID may have placed in Petitioner's permanent files and records a 914 Control Form. This form is issued by CID to be placed in the file of one who is subject to an ongoing investigation. This notifies the revenue agents or civil investigators that an active criminal case is pending and that all civil liability cases or audits are to be suspended. Further, the civil revenue officers are not to have any contact with this taxpayer so as not to interfere with an active criminal case. This 914 Control Form by itself establishes that the IRS no longer is pursuing any civil purpose- either examination or collection- with respect to Petitioner. At this point in time Petitioner is not involved in either a civil liability case or an audit for any tax year and considers this summons harassment by Pineda and Carson.

11. In so far as any defendant in this case is a third-party recordkeeper who is not classified under §7609 as a third-party recordkeeper, or is otherwise a person or party not covered by provisions of §7609, the due process clauses of the 5th and 14th Amendments apply. See Schulz v. IRS and Roundtree, 413 F.3d 297 (Second Circuit, 2005)

12. In the alternative, should this Court not quash the summons, Petitioner requests that the Court provide in its order that neither the IRS nor the Department of Justice be allowed to use information gathered by the IRS Summons(s) at issue here in any future criminal case. The Government would not object to this provision in the final order because the Summons(s) at issue here will be used strictly for a civil tax liability case.

13. All this being said, the Petitioner was summoned to the IRS offices and was interrogated for what seemed to be hours, was intimidated and screamed at by IRS agents, and was told to provide or produce whatever knowledge or recollections to Pineda in his performance of a criminal(?) investigation against another individual unrelated to Petitioner. Evidently not hearing anything that he could use Pineda made veiled threats about issuing a summons to Petitioners mother; although he did not do so he did issue this summons (Exhibit A) against the Petitioner and has begun a fishing expedition either against this Petitioner or perhaps to further his investigation against the other individual. This is harassment and/or retaliation by the IRS and its agents against the petitioner, by threat, not following IRS policy and/or procedure, and/or potential threat of audit. I respectfully request that any individual who is authorized to do so forward this to the appropriate authorities for investigation of such wrongdoings by Pineda and others so that the harassment, intimidation and misuse of power comes to an end.

I ask this Court, and do not believe it too much to ask, for an order for Pineda and all other IRS agents to cease and desist all **current** fishing expeditions into Petitioners records or anyone related to Petitioner. I also ask reimbursement of all costs associated with this filing from Pineda, the IRS or US Government.

Dated this twenty thirteenth day of April two thousand seventeen.

;by:

Kelly Ann Arismendy

KELLY ANN ARISMENDY, Petitioner
2011 Spenwick Dr., #729
Houston, Texas 77055

CERTIFICATE OF SERVICE

I, KELLY ANN ARISMENDY, do hereby certify that on 13 or 14 Apr-17, the foregoing documents are placed for delivery in the UNITED STATES POST OFFICE, postage pre-paid, respectively addressed to the following parties:

UNITED STATES OF AMERICA et al
US DISTRICT ATTORNEY
1000 Louisiana, Ste. 2300
Houston, TX 77002
Certified Mail, return receipt requested 7015 3430 0000 9929 7823

Custodian of Record
~~Marilyn J. Willis~~ Camilla C. Marzy
National Subpoena Processing
Mail Code IN1-4054
7610 West Washington St.
Indianapolis, IN 46231
Certified Mail, return receipt requested 7015 3430 0000 9929 7830

Miguel A. Pineda – Revenue Officer
Thomas Carson – Group Manager
Internal Revenue Service
700 E. San Antonio,
El Paso TX 79901-7020
Office: 915-834-6568
Certified Mail, return receipt requested 7015 3430 0000 9929 7854

by:

Kelly Ann Arismendy

KELLY ANN ARISMENDY, Petitioner
2011 Spenwick Dr., #729
Houston, Texas 77055

Summons

NSP03/29/2017AM

In the matter of KELLY ANN ARISMENDY [redacted] 5026 AUTUMN FOREST DR, HOUSTON, TX 77091-5002

Internal Revenue Service (Division): SMALL BUSINESS/SELF EMPLOYED

Industry/Area (name or number): Small Business / Self Employed

Periods: See Attachment 1 to Summons Form 2039 for Period Information

Received From Coal

The Commissioner of Internal Revenue

To: JP MORGAN CHASE BANK NA

At: COURT ORDER LEVY DEPT, 340 S CLEVELAND AVE FL 3, WESTERVILLE, OH 43081

You are hereby summoned and required to appear before MIGUEL A PINEDA, an officer of the Internal Revenue Service, to give testimony and to bring with you and to produce for examination the following books, records, papers, and other data relating to the tax liability or the collection of the tax liability or for the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws concerning the person identified above for the periods shown.

Please see attachment.

Under IRC 7609(c)(2)(D), this summons is exempt from notice requirements pertaining to third party summonses.

INFORMATION REDACTED IS
CONFIDENTIAL

Attestation

I hereby certify that I have examined and compared this copy of the summons with the original and that it is a true and correct copy of the original.

[signature]
Signature of IRS Official Serving the Summons

REVENUE OFFICER, 1000668576
Title

Business address and telephone number of IRS officer before whom you are to appear:

700 E SAN ANTONIO, EL PASO, TX 79901-7020 (915) 834-6568

Place and time for appearance at: 700 E SAN ANTONIO, EL PASO, TX 79901-7020

on the 21st day of April, 2017 at 8:00 o'clock a m.

IRS
Department of the Treasury
Internal Revenue Service
www.irs.gov
Form 2039(Rev. 10-2010)
Catalog Number 21405J

Issued under authority of the Internal Revenue Code this 22nd day of March, 2017

MIGUEL A PINEDA [signature]
Signature of issuing officer

REVENUE OFFICER
Title

Summons approved on 08/10/2016 by Group Manager, Thomas Carson
Signature of Approving Officer (if applicable)

GROUP MANAGER
Title

Part A – to be given to person summoned

tw 35

Exhibit A